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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-656

13 **MARLA MICHELLE BARSNESS,**
14 **aka MARLA MICHELLE RODARTE**
15 **3323 Clipstone Court**
16 **Riverside, CA 92503**

A C C U S A T I O N

17 **Registered Nurse License No. 586101**

Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs.

24 2. On or about August 22, 2001, the Board of Registered Nursing issued Registered
25 Nurse License Number 586101 to Marla Michelle Barsness, also known as Marla Michelle
26 Rodarte (Respondent). The Registered Nurse License was in full force and effect at all times
27 relevant to the charges brought herein and will expire on December 31, 2014, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order
2 to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse or
7 deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the
following:

9

10 (f) Conviction of a felony or of any offense substantially related to the
11 qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

12

13 10. Section 2762 of the Code states:

14 In addition to other acts constituting unprofessional conduct within the meaning
15 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
licensed under this chapter to do any of the following:

16

17 (b) Use any controlled substance as defined in Division 10 (commencing with
18 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
19 dangerous or injurious to himself or herself, any other person, or the public or to the
extent that such use impairs his or her ability to conduct with safety to the public the
20 practice authorized by his or her license.

21 (c) Be convicted of a criminal offense involving the prescription, consumption,
or self-administration of any of the substances described in subdivisions (a) and (b) of
22 this section, or the possession of, or falsification of a record pertaining to, the
substances described in subdivision (a) of this section, in which event the record of
23 the conviction is conclusive evidence thereof.

24

25 11. Section 2765 of the Code states:

26 A plea or verdict of guilty or a conviction following a plea of nolo contendere
27 made to a charge substantially related to the qualifications, functions and duties of a
registered nurse is deemed to be a conviction within the meaning of this article. The
28 board may order the license or certificate suspended or revoked, or may decline to
issue a license or certificate, when the time for appeal has elapsed, or the judgment of

conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

13. California Code of Regulations, title 16, section 1445 states:

....

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

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1 COSTS

2 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
7 included in a stipulated settlement.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Dangerous Use of Alcohol on October 11, 2009)**

10 15. Respondent has subjected her license to disciplinary action under section 2762,
11 subdivision (b) of the Code for unprofessional conduct in that on or about October 11, 2009,
12 Respondent used alcohol in a manner that was dangerous and injurious to herself and others. The
13 circumstances are as follows:

14 a. Shortly after midnight, on or about October 11, 2009, a patrol officer with the
15 Huntington Beach Police Department observed Respondent lying on the ground in some bushes.
16 Respondent was having difficulty standing. As the officer attempted to make contact with
17 Respondent, she cursed at the officer, staggered towards a vehicle parked a short distance away,
18 got into the passenger seat and closed the door. The officer made contact with Respondent at the
19 vehicle. The officer noted that Respondent had all the objective symptoms of alcohol intoxication
20 including slurred speech, bloodshot and watery eyes, and a strong smell of an alcoholic beverage
21 on her breath. The officer had Respondent exit the vehicle. Respondent attempted to walk away;
22 whenever the officer attempted to detain her, Respondent would twist away and swing her arms at
23 the officer. Respondent was uncooperative and she was yelling profanities. The officer
24 determined that Respondent was unable to provide care or safety for herself, so she was arrested
25 for public intoxication. Respondent was handcuffed and placed in the back of a patrol car for
26 transport. When an officer asked Respondent to put her feet inside the patrol car, Respondent
27 brought her knees to her chest and kicked out at the officer in the groin area. During booking,
28 Respondent continued to be uncooperative and berated the officers. Respondent kicked another

1 officer in the thigh/groin area. Respondent had to be restrained by several officers to be searched,
2 restrained to be carried to a holding cell, and restrained and forcibly placed in a prone position in
3 order to remove the handcuffs.

4 b. As a result of the arrest, on or about February 22, 2010, in a criminal
5 proceeding entitled *People of the State of California v. Marla Michelle Barsness*, in Orange
6 County Superior Court, case number 09WM10533, Respondent pled guilty to an amended count
7 of violating Penal Code section 415, disturbing the peace, an infraction. The court dismissed two
8 counts of violating Penal Code section 243, subdivision (c)(2), battery on a peace officer with
9 injury, and Penal Code section 148, subdivision (a)(1), resisting and obstructing a peace officer
10 pursuant to the plea agreement.

11 c. As a result of the guilty plea, on or about February 22, 2010, Respondent was
12 granted three years informal probation, and ordered to complete 32 hours of community service,
13 to pay fees, and fines in the amount of \$1,165, and to comply with probation terms.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(January 30, 2012 Criminal Convictions for DUI on September 11, 2011)**

16 16. Respondent has subjected her license to disciplinary action under sections 490 and
17 2761, subdivision (f) of the Code in that Respondent was convicted of crimes that are
18 substantially related to the qualifications, functions, and duties of a registered nurse. The
19 circumstances are as follows:

20 a. On or about January 30, 2012, in a criminal proceeding entitled *People of the*
21 *State of California v. Marla Michelle Barsness, aka Marla Michelle Rodarte, aka Marla M.*
22 *Rodarte, aka Marla Rodarte*, in Orange County Superior Court, case number 11HM17455, which
23 was consolidated with case number 11HM15541, Respondent was convicted on her plea of guilty
24 of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol
25 (Count 2), and Vehicle Code section 23152, subdivision (b), driving with a blood alcohol
26 concentration (BAC) of .08 percent or more (Count 3), misdemeanors. The court found true the
27 special allegation as to Count 3 that Respondent's BAC was .20 percent or more, pursuant to
28 Vehicle Code section 23538, subdivision (b)(2), and it was designated a "strike prior" offense

1 pursuant to Penal Code section 654. The court dismissed additional counts pursuant to a plea
2 agreement as follows: child endangerment (Pen. Code, § 273, subd. a(b)); driving under the
3 influence of alcohol on September 1, 2011 (Veh. Code, § 23152, subd. (a)); driving with a BAC
4 of .08 percent or more on September 1, 2011 (Veh. Code, § 23152, subd. (b)); and reckless
5 driving (Veh. Code, § 23103, subd. (a)). The court certified Respondent's BAC as .25 percent.

6 b. As a result of the convictions, on or about January 30, 2012, Respondent was
7 granted three years informal probation and ordered to complete a three-month First Offender
8 Alcohol Program and a MADD Victim Impact Panel session. Respondent was further ordered to
9 complete 25 self help meetings such as Alcoholics Anonymous, completely abstain from alcohol,
10 pay fees, fines, and restitution in the amount of \$2,016, and comply with standard alcohol
11 conditions.

12 c. The facts that led to the convictions are that at 2:00 in the morning, on or about
13 September 11, 2011, an officer with the University of California Irvine Police Department was
14 monitoring traffic on campus when he observed a vehicle, driven by Respondent, leave a theater
15 parking lot by making an illegal left turn, then proceed to travel eastbound in the westbound lanes
16 of traffic. At a lighted intersection, Respondent failed to yield to the red light and cut across the
17 intersection from the wrong side of the road. The officer conducted an enforcement stop. When
18 asked for her driver's license and registration, Respondent attempted to negotiate with the officer
19 to let her go home. The officer noted a strong odor of an alcoholic beverage emanating from
20 inside the vehicle. Respondent initially denied having consumed alcohol, then she admitted to
21 drinking earlier in the evening. The officer attempted to ask Respondent pre-field sobriety test
22 questions, but Respondent kept interrupting, saying this will ruin her life. Respondent began
23 crying, then she offered several times to pay the officer if he would let her go. Respondent told
24 the officer that she was going to refuse to cooperate with the investigation. Respondent was
25 arrested for driving under the influence. During booking, Respondent continued to be
26 uncooperative and refused to provide a breath or blood sample. Respondent eventually agreed to
27 provide a blood sample.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Dangerous Use of Alcohol on September 11, 2011)**

3 17. Respondent has subjected her registered nurse license to disciplinary action under
4 section 2762, subdivision (b) of the Code for unprofessional conduct in that on or about
5 September 11, 2011, as described in paragraph 16, above, Respondent used alcoholic beverages
6 to an extent or in a manner that was dangerous and potentially injurious to herself, and to others
7 in that she operated a motor vehicle while significantly impaired.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Alcohol-Related Criminal Convictions)**

10 18. Respondent has subjected her registered nurse license to disciplinary action under
11 section 2762, subdivision (c) of the Code for unprofessional conduct in that on or about January
12 30, 2012, as described in paragraph 16, above, Respondent was convicted of criminal offenses
13 involving the consumption of alcohol.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Board of Registered Nursing issue a decision:

17 1. Revoking or suspending Registered Nurse License Number 586101, issued to Marla
18 Michelle Barsness, also known as Marla Michelle Rodarte;

19 2. Ordering Marla Michelle Barsness to pay the Board of Registered Nursing the
20 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
21 Professions Code section 125.3;

22 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: February 21, 2013

for Stacie Ben
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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